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No. 85-569

Supreme Court of the United States

OCTOBER TERM, 1985

DRAVO BASIC MATERIALS COMPANY,
LOUISIANA MATERIALS COMPANY, INC.
PONTCHARTRAIN MATERIALS CORPORATION,
Intervenors and Petitioners,

v.

STATE OF LOUISIANA, EX REL WILLIAM J. GUSTE, JR.,
ATTORNEY GENERAL, ET AL
Plaintiffs and Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

May petitioners raise for the first time in this Court the issue whether the Court of Appeals for the Fifth Circuit erred in continuing to hold, as it has since 1973, that the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA), requires an environmental impact statement (EIS) when applying a rule of reason or reasonableness standard the court finds that a major Federal action may significantly affect the quality of the human environment.

LIST OF PARTIES

The parties in this Court include the petitioners, all of whom intervened as defendants in the proceedings below: (1) Dravo Basic Materials Company, successor to Radcliffe Materials, Inc., and a wholly owned subsidiary of Dravo Natural Resources Company, which in turn is a wholly owned subsidiary of The Dravo Corporation; (2) Pontchartrain Materials Corporation, a wholly owned subsidiary of Pontchartrain Dredging Corporation; and (3) Louisiana Materials Company, Inc., whose parent company is American Marine Holding Company. Plaintiffs below, respondents here, include (1) the State of Louisiana ex rel William J. Guste, Jr., Attorney General; (2) Save Our Coast, Inc.; (3) Orleans Audubon Society; (4) Sierra Club; (5) Manchac Fisherman's Association; (6) Environmental Defense Fund.[1]

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[1] The United States Officials who were the original defendants in this case are (1) Colonel Robert C. Lee, District Engineer, New Orleans District, U.S. Army Corps of Engineers; (2) Lieutenant General Joseph K. Bratton, Chief of Engineers, Department of the Army; (3) William R. Gianelli, Assistant Secretary (Civil Works), Department of the Army, and (4) John O. Marsh, Jr., Secretary, Department of the Army.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents respectfully request that this Court deny the petition for a writ of certiorari filed by Dravo Basic Materials Company, Louisiana Materials Company, Inc., and Pontchartrain Materials Corporation, Intervenors and Petitioners, seeking reviews of the judgment of the United States Court of Appeals for the Fifth Circuit in this case. The United States, whose officials were defendants in the courts below, did not join in the petition for writ of certiorari. The opinion below is reported as *State of Louisiana, et al v. Col. Robert C. Lee, et al*, 758 F.2d 1081 (5th Cir. 1985), rehear. den. ____F.2d ____(5th Cir. 1985).

STATUTE AND REGULATION INVOLVED

The case involves the National Environmental Policy Act, 83 Stat. 852, 42 U.S.C. § 4332, *et seq.*, and the

regulations promulgated thereunder, 40 C.F.R. Parts 1500-1508, particularly 40 C.F.R. § 1508.3.[2]

STATEMENT OF THE CASE

The State of Louisiana and five organizations concerned with environmental protection brought this action against officials of the Corps of Engineers alleging that the Corps failed to comply with NEPA in issuing renewal permits for the dredging of clam and oyster shells along the coast of Louisiana and in Lakes Pontchartrain and Maurepas. The shell dredging companies whose permits were affected intervened as defendants. Summary judgment was thereafter granted defendants by the District Court. The Court of Appeals for the Fifth Circuit reversed, holding that the District Judge had applied the wrong standard of review. The Fifth Circuit quoted its precedents to reiterate that " 'the standard of judicial review is whether the agency decision not to develop an environmental impact statement is reasonable and made objectively and made in good faith on a renewable environmental record. 'If the decision is reasonable, the determination must be upheld.' " (*State of Louisiana, et al v. Lee, et al, supra*, 758 F.2d at 1083).

The Court of Appeals quoted its leading case as the subject:

> If the court concludes that no environmental factor would be significantly degraded by the project, [defendants'] determination not to file the impact statement should be upheld. On the other hand, if the court

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[2] The statute is attached to the petition for writ of certiorari as Appendix E. The pertinent regulation is attached to this Brief in Opposition as Appendix A.

> finds that the project *may* cause a significant degradation of some human environmental factor (even though other environmental factors are affected beneficially or not at all), the court should require the filing of an impact statement or grant [plaintiffs] such other equitable relief as it deems appropriate.
>
> *Save Our Ten Acres v. Kreger*, 472 F.2d 463, 466-67 (5th Cir. 1973) (emphasis added).

(*Id.*, at 1084.) The Court held that *Save Our Ten Acres* "remains the controlling precedent" in the circuit. (*Id.*, at 1084-1085.) The Court vacated and remanded to the District Court, stating:

> Based on the record before us, we cannot say that the district court would have granted summary judgment to defendants under the correct standard. The following are some examples of the environmental effects discussed in the record. The dredging will affect over two million acres of ecologically fragile water and wetland. By its very nature the dredging process is environmentally disruptive. A barge equipped with an excavating cutter-head digs through the shell deposits in reefs typically buried under four to eight feet of sediment. The shells are recovered through hydraulic suction. Other matter collected with the shells is diluted with wash water and then discharged. As the discharge settles, it creates an inorganic gel which spreads across the bottom and can suffocate benthic or bottom-dwelling life, such as vegetation or oysters. Nektonic life, (fish, crabs, or shrimp) can be affected by the dredging or if it disrupts their food supply. The process also increases the turbidity of the water, thereby reducing the light available for photosynthesis. Furthermore, it can also interfere with the process of delta-build-

> ing in the Atchafalaya River and with the health of living reefs and the formation of new reefs. The Corps has deemed the process sufficiently disruptive to prepare impact statements for dredging in Texas, Florida, and Alabama—each of which produces less shell than Louisiana.

(*Id.* at 1085.)

Proceedings have resumed in the District Court to implement the mandate of the Court of Appeals. Further briefs and affidavits have been submitted and certain discovery ordered by the District Court is under way. That Court had ordered the case submitted on reconsideration in January, 1986.

SUMMARY OF ARGUMENT

Petitioners failed to raise the issue before the Fifth Circuit which they now press upon this Court. Indeed, both the government and the Petitioner-Intervenors acknowledged in the Fifth Circuit the validity of the standard of review with which the latter now takes issue.

While different courts have differently verbalized the standard for judicial review of an agency's threshold determination not to prepare an environmental impact statement under NEPA, petitioners have failed to show that the different verbal formulations—each in use for well over a decade—in reality constitute different tests. Moreover, should there be a difference in emphasis, the searching scrutiny which the Fifth Circuit has long applied and which it continued to apply in this case is clearly the appropriate standard. An agency's determination completely to avoid the Congressionally determined

NEPA process should not too lightly escape judicial scrutiny.

ARGUMENT

I. PETITIONERS FAILED TO RAISE THE LEAD ISSUE IN THE COURT OF APPEALS WHICH THEY NOW URGE UPON THIS COURT, AND THE CASE DOES NOT OTHERWISE PRESENT AN APPROPRIATE OCCASION FOR A WRIT OF CERTIORARI

The Court of Appeals for the Fifth Circuit has applied, as it has since 1973, a reasonableness standard to see if there may be significant environmental impacts which, under the National Environmental Policy Act (NEPA), require an environmental impact statement. Respondents respectfully submit that this case presents no appropriate occasion for issuance of a writ of certiorari for the following reasons:

A. Petitioners failed to raise in the Court of Appeals the very issue which they now assert as error. In that court Petitioners themselves acknowledged the validity of the very reasonableness standard adherence which they now assert as a ground for issuance of the writ. (Contrast Petition for Writ of Certiorari at i with the following from Petitioners' Fifth Circuit brief: "The Corps' decision not to require preparation on EIS in connection with the issuance of the time extensions is to be reviewed under a standard of "reasonableness." (Brief of intervenors - Appellees in Fifth Circuit at 25.)[3]

[3] In the Court of Appeals the United States also asserted the validity of the very standard which the Intervenors and Petitioners

B. With respect to the other ground Petitioners assert as a basis for issuance of the writ, the continued adherence of the Fifth Circuit to the standard of requiring an environmental impact statement when the environmental assessment shows there may be significant environmental impacts, Petitioners omit to quote—or even to mention—the binding regulation that codifies the requirement, 40 C.F.R. 1508.3.[4]

C. The asserted "conflict" in the Circuits which Intervenors and Petitioners describe is illusory rather than substantive. While various courts over the years phrased their descriptions of the review of agency threshold decisions not to prepare environmental impact statements under NEPA in varying ways, Petitioners have failed to show how in application this results in different dispositions. (See para. II(A), *infra.*)

D. The record for Supreme Court review on this case

(shell dredging companies whose permits renewals are at stake) here contest. In the words of the United States' brief, "*The district court properly held 'hat review of the Corps' determination not to prepare an EIS should be on a standard of reasonableness based on the administrative record.* [footnote omitted]" (Brief for the Federal Appelles in 5th Cir. at 15); also see *id.* at 12. (Emphasis the government's)). See para. II, *infra.*

[4] The Council on Environmental Quality (CEQ) has adopted regulations to implement NEPA, 40 C.F.R. Parts 1500-1508, which this court has described as binding on all agencies. *Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979). NEPA requires an environmental impact statement for environmental impacts significantly affecting the quality of the human environment. §102(2) (C), 42 U.S.C. §4332(2) (C). The CEQ NEPA Regulations then define "affecting" as will or may have an effect on." 40 C.F.R. 1508.3. Why CEQ and the Court of Appeals are correct in their interpretation of the law we discuss at para. II, below.

is as yet incomplete in that the Court of Appeals has invited the District Court more fully to develop the record on issues peculiar to this case, including an explanation of why in 1982 the Corps of Engineers found numerous significant environmental impacts and in 1984 on reconsideration the Corps reversed itself repeatedly, finding such significance not to exist.[5]

Additionally, the Fifth Circuit requested a comparison of the environmental impacts were the permits to be

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[5] The Corps of Engineers prepared environmental assessments in 1982 which clearly asserted numerous significant environmental effects. This lawsuit was then commenced. The Corps then asked for and received permission of the District Court to reconsider. It did so, changing (in 1984) the environmental assessments so as to revise or at least minimize any reference to "significant" environmental impacts (which would require an environmental impact statement). It was to this question-provoking set of developments that Chief Judge Clark of the Fifth Circuit referred when he said, speaking for the court:

> The many differences between the 1982 and 1984 environmental assessments also raise questions. The 1984 document reaches conclusions opposite to many of those reached in the 1982 report. Every change tends to minimize the environmental significance of the continuation of the dredging. The record leaves the reasons for these changes unclear. Plaintiffs maintain that the conditions imposed by the 1984 permits are similiar in many respects to those in place in 1982 and even in the 1977 permits. The defendants did not respond to plaintiffs' assertion that the changes in the conditions were insufficient to warrant the changes made in the environmental assessment. We reach no conclusion as to the validity of the 1984 assessment but remind the district court that, to some extent, the 1984 assessment is a "post hoc rationalization and thus must be viewed critically." *Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 91 S. Ct. 814, 826, 28 L. Ed. 2d 136 (1971).*

State of Louisiana, et al v. Lee, et al., supra, 758 F.2d at 1085.

extended five years with the impacts were the permits not to be reissued.[6]

Since remand further proceedings have continued in the District Court. All parties have submitted further affiants to that court, addressed in part to the issues described above. The District Court has ordered that the affiants be deposed and that any concluding memoranda be filed prior to the anticipated resubmission of the case in January, 1986.

In brief, the procedural posture of this case makes Supreme Court review at this stage inappropriate. (See *Brotherhood of Locomotive Firemen v. Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967); Stern and Gressman, *Supreme Court Practice*, § 419 (5th Ed. 1978).)

E. The case has been correctly decided by the Fifth Circuit, as we discuss in para. II, below.

II. THE COURT OF APPEALS FOR THE FIFTH CIRCUIT DID NOT ERR WHEN IT ADHERED TO ITS LONGSTANDING STANDARD OF REVIEW FOR THE THRESHOLD DECISION WHETHER NEPA REQUIRES AN EIS.

Though presented by Petitioners as one question, there are two aspects to the Fifth Circuit's standard of review for the threshold question whether to prepare an

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[6] As stated by the Court of Appeals:

> In deciding this case on remand, the trial court should compare the projected ecological status of the affected areas if the dredging is continued for another five years with their projected condition if the dredging is halted now.

(*Id.* at 1086.)

environmental impact statement under NEPA with which Petitioners take issue. One relates to the longstanding reasonableness standard employed by that Court, and the other to the equally longstanding requirement that the statement is to be prepared whenever a major Federal action may significantly affect the quality of the human environment.[7] Petitioners failed to raise the first issue in the Court of Appeals and fail totally to make any showing of error as to the second issue.

The Fifth Circuit was correct in both aspects of its standard. We discuss each.

A. The Fifth Circuit was Correct in its Application of the Rule of Reason or Reasonableness Standard.

The Fifth Circuit's approvals to the threshold decision whether to prepare an EIS is a wise and even necessary one. It is important to realize just what is being judicially reviewed in such a threshold decision. It is not the informed exercise of agency discretion, to which considerable deference is appropriately due. Rather what is being reviewed is the initial agency decision whether or not to inform its own discretion, preparing the environmental impact statement that will provide the information which will enable the decisionmakers and the public accurately to evaluate the environmental consequences prior to coming to conclusions. An agency should not

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[7] Petitioners refer to a "reasonableness plus" standard supposed to have been invented in this case. (Petitioners for Writ of Certiorari at 4, 7.) In fact, both elements of the test applied by the Fifth Circuit in this case were applied as far back as *Save Our Ten Acres v. Kreger*, *supra*, 472 F.2d at 465, 467 (5th Cir. 1973).

lightly be enabled to bypass the entire Congressionally-created environmental impact statement process with a cursory assessment.

It was the Fifth Circuit itself twelve years ago which clearly articulated the rationale for a searching scrutiny of the threshold decision:

> NEPA was intended not only to insure that the appropriate responsible official considered the environmental effects of the project, but also to provide Congress (and others receiving such recommendation or proposal) with a sound basis for evaluating the environmental aspects of the particular project or program. The spirit of the Act would die aborning if a facile, ex parte decision that the project was minor or did not significantly affect the environment were too well shielded from impartial review. Every such decision pretermits all consideration of that which Congress has directed be considered "to the fullest extent possible." The primary decision to give or bypass the consideration required by the Act must be subject to inspection under a more searching standard.

Save Our Ten Acres v. Kreger, *supra*, 472 F.2d 463, 466 (5th Cir. 1973).[8] This standard has been followed by most

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[8] Other courts have explained why the reasonableness standard is appropriate. The arbitrary and capricious standard is primarily applicable to reviewing an agency's discretionary decisions. The decision to prepare an EIS, however, is not committed to the agency's discretion. An EIS must be prepared for actions that may significantly affect the quality of the human environment. The mandatory nature of this directive makes the "reasonableness" standard more appropriate. *Foundation for North American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1177, n.24 (9th Cir. 1982); *see Wyoming Outdoor Coordinating Council v. Butz*, 484 F.2d 1244, 1248-49 (10th Cir. 1973).

of the courts[9] and has been approved by the commenters.[10]

An appropriate judicial solicitude for the discretion of administrative agencies properly attaches when, based on whatever record the law requires, such informed discretion is exercised. The decision not to prepare an EIS, however, is a decision not to inform that discretion and therefore invites a more exacting judicial scrutiny.

While Respondents urge that the Fifth Circuit acted properly in its continued reliance upon the reasonableness standard, they also note that Petitioners have failed to demonstrate that the verbal formulation is in fact a substantive rather than an illusory distinction. The First Circuit, for instance, looked at the "various legal formu-

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[9] In addition to the Fifth Circuit, see *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1320 (8th Cir. 1974) (*en banc*); *City of Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975); *Wyoming Outdoor Coordinating Council v. Butz, supra*, 484 F.2d at 1248-49 (10th Cir. 1973); *National Wildlife Federation v. Marsh*, 721 F.2d 767, 782 (11th Cir. 1983); also see *Lower Alloways Creek Township v. Public Service Electric and Gas Co.*, 687 F.2d 732, 742 (3d Cir. 1982). Courts following the arbitrary and capricious standard include *Hanly v. Kleindienst*, 471 F.2d 823, 829-830 (2d Cir. 1972), *cert. den.* 412 U.S. 908 (1973); *City of Alexandria v. Federal Highway Administration*, 756 F.2d 1014, 1017 (4th Cir. 1985); *River Road Alliance v. Corps of Engineers*, 764 F.2d 445, 449 (7th Cir. 1985).

[10] In the words of Dean Frederick Anderson, NEPA's leading scholar, "The policy and goals of the Act suggest that the approach of *Save Our Ten Acres* is correct. . . ." Anderson, *The National Environmental Policy Act* in Dolgin and Guilbert, Environmental Law Institute, *Federal Environmental Law*, West Pub. Co., at 361 (1974). The basic rationale is that NEPA, unlike other statutes, is a self regulation statute, and there is nobody, except the courts, to keep agencies from totally flouting the EIS requirement. *Id.; see* Rodgers, *Handbook on Environmental Law*, West Pub. Co., at 751 (1977).

lae" and then declined to "enter the luxurient jungle of differing review descriptions." *Quinonez - Lopez v. Coco Lagoon Development Corp.*, 733 F.2d 1, 3 (1st Cir. 1984). That court suggested that "whatever verbal formulation it applies" the court "must essentially look to see if the agency decision, in the context of the record, is too 'unreasonable' (given its statutory and factual context) for the law to permit it to stand." *Sierra Club v. Marsh*, 769 F.2d 868, 871 (1st Cir. 1985). Similarly the Sixth Circuit examined both standards, and then concluded, "No matter what standard courts have used, they have to look to see whether the Corps made a reasoned determination." *Boles v. Outon Dock, Inc.*, 659 F.2d 74, 75 (6th Cir. 1981). The Third Circuit said it found it unnecessary to join either group of opposing circuits, but then applied the reasonableness test. *Lower Alloways Creek Township v. Public Service Electric and Gas Co., supra*, 687 F.2d at 742 (3d Cir. 1982). The District of Columbia Circuit appears without difficulty to equate and apply the differing tests. See *Maryland - National Capital Park and Planning Commission v. U.S. Postal Service*, 487 F.2d 1029, 1039 n.7 (D.C. Cir. 1973); *Committee for Auto Responsibility v. Solomon*, 603 F.2d 992, 1002-03 (D.C. Cir. 1979); *Peshlakai v. Duncan*, 476 F. Supp. 1247, 1252 (D.D.C. 1979). Perhaps the Seventh Circuit had the most appropriate summary: "[W]e are not sure how much if any practical difference there is between 'abuse of discretion' and 'unreasonable.'" *River Road Alliance v. Corps of Engineers, supra*, 784 F.2d at 449 (7th Cir. 1985); see *City of Alexandria v. Federal Highway Administration, supra*, 756 F.2d at 1017 (4th Cir. 1985) (to similar effect). Petitioners have certainly not shown any.

B. The Fifth Circuit was Correct in Requiring Preparation of an Environmental Impact Statement When a Major Federal Action May Significantly Affect the Quality of the Human Environment.

The formulation of the scope of NEPA's EIS requirement have been variously stated by the courts.[11] The statement is required if the action "may cause a significant degradation of some environmental factor" (*Save Our Ten Acres v. Kreger*, 472 F.2d 463, 467 (5th Cir. 1973); *State of Louisiana v. Lee, supra*, 758 F.2d at 1085 (5th Cir. 1985)); if the action "*may* significantly degrade some human environmental factor" (*Foundation for North American Wild Sheep v. U.S. Department of Agriculture, supra*, 681 F.2d at 1178 (9th Cir. 1982); if it "could have a significant effect on the environment" (*Minnesota Public Interest Research Group v. Butz, supra*, 498 F.2d at 1320 (8th Cir. 1974) (*en banc*); if there was a "substantial possibility" that agency action "could" have a significant impact (*Sierra Club v. Marsh, Supra*, 769 F.2d at 871 (1st Cir. 1985); if it "*arguably* will have an adverse environmental impact" (*Students Challenging Regulatory Agency Procedure v. United States*, 346 F. Supp. 189, 201 (D.D.C. 1972) (three judge court), rev'd as other grounds, 412 U.S. 669 (1973) (emphasis in original); if it has a "potentially significant adverse effect" (*Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972), *cert. denied* 412 U.S. 908 (1973));[12] and "whenever it can be fairly ar-

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[11] Generally see W.H. Rodgers, *Environmental Law* § 7.6, at 754-755 (1977), who summarizes many of these "[f]ormulations popularized by the courts."

[12] One may note that while Petitioners attempt to create a dichotomy between the Second and Fifth Circuits on the standard of

gued on the basis of substantial evidence that the project may have a significant environmental impact" (*No Oil, Inc. v. Los Angeles*, 13 Cal. 3d 68, 75, 82-86, 52 P.2d 66, 70, 75-78, 118 Cal. Rptr. 34, 38, 43-46 (Cal. S.C. 1974) (interpreting a state NEPA analogue).

The case law, aptly described as a "common law of NEPA" (*Kleppe v. Sierra Club*, 427 U.S. 390, 421 (1976) (Marshall J., concurring in part and dissenting in part)) was in large part codified in the Council on Environmental Quality (CEQ) NEPA Regulations through what this Court described as the "detailed and comprehensive process ordered by the President, of transforming advisory guidelines into mandatory regulations applicable to all federal agencies." (*Andrus v. Sierra Club*, *supra*, 442 U.S. at 358 (1979)).[13]

The CEQ NEPA Regulations define "affecting", a statutory predicate for an EIS (NEPA, § 102 (2) (C), 42 U.S.C. § 4332 (2) (C)), as "will or may have an effect on." 40 C.F.R. 1508.3. Both "will" and "may" are used both to reflect the case law and accurately to implement the

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review of threshold determinations not to prepare environmental impact statements, both Circuits have long agreed that certainty or impact is not a precondition to statement preparation. Indeed, petitioners do not make any showing of a division among the circuits on this point.

[13] The CEQ NEPA Regulations when promulgated had the distinction unique in environmental regulation of being welcomed by institutions as diverse as the United States Chamber of Commerce, The National Governors' Association, the National Wildlife Federation, and the Natural Resources Defense Council. Yost, *Streamlining NEPA—An Environmental Success Story*, 9 B.C. Envtl. Aff. L. Rev. 507, 509 (1981-1982). They have remained in effect, unchanged, through the change of administrations.

Congressional intent. If there will not be a significant environmental impact, no EIS is required by NEPA. But the converse situation—when an agency does not know enough to say there "will be" no significant impact—necessarily includes both the situations where it is already known that there will be significant impacts and where all that is known is that there may be such impacts. (See *State of Louisiana* v. *Lee*, *supra*, 758 F.2d at 1085).[14]

Both the case law and the regulations support the analysis of the Fifth Circuit.

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[14] The total number of environmental impact statements prepared under this threshold standard remains a modest one given the pervasiveness of federal activity, both directly undertaken and by way of funding, permission, or leasing of private, state, and local action. According to the Council on Environmental Quality's last released report covering the proceeding year, in 1983 all Federal agencies together produced 677 draft, final, and supplemental statements. (Council on Environmental Quality, *Environmental Quality 1983, the 14th Annual Report to Council on Environmental Quality* at 333 (1984).) Since all statements are released in both draft and final, and some are supplemented, this means that the total number of "major Federal actions significantly affecting the quality of the human environment" (NEPA, § 102(2)(C)) was only in the neighborhood of 300. NEPA litigation is of similarly modest proportions. In the most recently released figures, those for 1982, a total of 157 lawsuits were filed based in whole or in part on NEPA. (CEQ, *Environmental Quality 1983*, *supra*, at 265.) The two principal categories of complaints alleged the inadequacy of environmental impact statements and the failure to prepare such statements. (*Id.* at 266.) Petitioners' apparent apprehensions about the "may" threshold (Petition for Writ at 11) are in historical fact ill-founded.

CONCLUSION

For the foregoing reasons respondents respectfully submit that the writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

40 C.F.R. 1502.3:

§ 1502.3 Staturory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report

On proposals (§ 1508.23)

For legislation and (§ 1508.17)

Other major Federal actions (§ 1508.18)

Significantly (§ 1508.27)

Affecting (§ § 1508.3, 1508.8)

The quality of the human environment (§ 1508.14).

40 C.F.R. 1508.3:

§ 1508.3 Affecting.

"Affecting" means will or may have an affect on.